United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

•74-1671

JUL 1 1974

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. : 74-1671

FRANK TUBBS, PRO SE
APPELLANT

V.

UNITED STATES OF AMERICA
APPELLEE

BRIEF OF APPELLANT
FRANK TUBBS

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Terre Haute, Indiana
47808

Counsel For Appellant
Frank Tubbs

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STATEMENT OF THE CASE

/See: Appendix, page numbers:(4-F)-thru-(4-I)/.

May it please the Court, Appellant Tubbs herein respectfully request that the statement of the case as presented in Appellant's direct appeal brief-(Docket No: 35426), be accepted as it appears in the Appellant's Appendix-(Docket No: 74-1671).

ISSUES PRESENTED

I. Traverse of District Court's ruling on application for a writ of habeas corpus.

II. Does the District Court for the District of Connecticut have jurisdiction to grant post-conviction relief in a writ of habeas corpus pursuant to Title 28 U.S.C.A. 2241 (c), (1), (3) to a prisoner "In Federal Custody" who was tried, convicted, and sentenced in that Court?

NOTE : Preface to "Federal Constitutional Questional" presented in Civil NO. N-74-88 in the District Court for the District of Connecticut at New Haven, Connecticut, in Appellant's application for a writ of habeas corpus.

III . Did the amendment of the indictment(12,716), in substance by the District Court without resubmitting it to the Grand Jury who returned a true bill on sanesaid indictment violate the Fifth Amendment of the Constitution of the United States of America?

TRAVERSE OF DISTRICT COURT'S
RULING ON APPLICATION FOR A WRIT
OF HABEAS CORPUS

Comes now Frank Tubbs, Appellant, Pro Se, and prays this Honorable Court Of Appeals for the Second Circuit to vacate the District Court for the District Of Connecticut, Appellee's, ruling on Appellant's application for a writ of habeas corpus for the below enumerated reasons:

1.) This cause was submitted for consideration in an application for a writ of habeas corpus in the District Court for the District Of Connecticut at New Haven, before the Honorable Robert C. Zampano, United States District Judge;

2.) Said application was filed with the Clerk of the District Court, with the prescribed filing fee, for the United States District Court, District Of Connecticut, on the 17th day of April, 1974;

3.) The ruling on Appellant Tubbs' application for a writ of habeas corpus, under Civil number: N-74-88, was entered on April 17th, 1974, dismissing said application FOR numerous reasons and concluding with final reason being "lack of jurisdiction";

4.) Accordingly, judgment was ordered and decreed on the 18th day of April, 1974, dismissing samesaid application for a writ of habeas corpus for "lack of jurisdiction."

5.) In so ruling, the District Court cited contrary to proper section 28 U.S.C. 2241(a); Schlanger V. Seamans, 401 U.S. 487 (1971), to wit:

"The petitioner's application for habeas relief merely seeks to relitigate issues previously raised and rejected at trial, on appeal, and in two 2255 motions. In any event, since petitioner is presently incarcerated in the United States Penitentiary at Terre Haute, Indiana, this Court lacks jurisdiction to grant him the post-conviction relief he seeks. 28 U.S.C. 2241(a); Schlanger V. Seamans, 401 U.S. 487 (1971).

Accordingly, the papers may be filed without fee; the petition is dismissed."

6.) In the above quoted ruling, the District Court has consistently stated allegations that are consistently contradicted by the records in this cause; they are as follows:

/See: Appendix, page number (4-H)/

7.) The allegation by the District Court that this issue was raised and rejected at trial is evidently based on the case cited U.S. V. Roche, ('Roche' properly spelled: 'Roach') , 321 Fed. 2d 1. An examination of this said case will clearly reflect that it is in overwhelming support of the alleged Constitutional error in Appellant Tubbs' application for a writ of habeas corpus. /See: appendix, page numbers:(14.) and (14-C)/.

/See: Appendix, page numbers:(4.) and (4-A)/

8.) The allegation by the District Court that this issue was raised and rejected on appeal is completely contradicted by the records.

/See: Appendix, page numbers:(7.) and (7-A)/

9.) The allegation by the District Court that this issue was raised and rejected in two previous 2255 motions is also contradicted by the records. Appellant Tubbs herein attest to the fact that this issue was indeed raised in his previous 2255 motions and the records clearly reflect and substantiate this fact. The records

will also substantiate the fact that the District Court rejected each of the aforementioned 2255 motions without the benefit of a hearing and without ruling on this issue. It follows logic that if the issue was never heard by the District Court it could not have been rejected. See: Powers V. United States, Summary Calendar number 71-1352, June 24th, 1971, (5th Cir.); See: also, Romero V. United States, 5th Cir. 1964, 327 F. 2d 711. /See: also, Appendix, page number: (11.)/. # 11-B

/See: Appendix, page numbers:(12.), (12-A), (12-B), (13.) and (13-A)/ 10.) The District Court has consistently rejected Appellant Tubbs previously sought relief by way of post-conviction-habeas-corpus-petitions on the premise that the petitions were conclusionary, frivolous and without merit and without the benefit of a hearing on the issues presented. The issue that was raised in Appellant's third 2255 motion combined with F.R.A.P. Rule 35 28 U.S.C. for a reduction of sentence was also raised in Appellant Tubbs' two previous 2255 motions. The records will clearly reflect that each motion had been denied without the benefit of a hearing. In the above combined 2255 with Rule 35 motion filed by Appellant Tubbs, the District Court contradicts its previous position that this issue is without merit and agrees with Appellant and VACATES the sentence imposed on the Second Count of the indictment-(12,716); [See indictment-(12,716) in the Appendix, pages numbers;(3.)] and [(3-A)]; NOTE: The dotted line represents where the District Court took a pair of scissors and literally "cut-off" the Third Count of this indictment.

11.) Finally, as to the District Court's allegation that:

> "since petitioner is presently incarcerated in the United States Penitentiary at Terre Haute, Indiana, this Court lacks jurisdiction to grant him the post-conviction relief he seeks. 28 U.S.C. 2241(a); Schlanger V. Seamans, 401 U.S. 487 (1971)."

Appellant Tubbs herein concludes, and is supported by the records, that the District Court should have granted the relief sought by Appellant Tubbs which he is verily entitled. For it is common knowledge that the sentencing Court retains jurisdiction in criminal cases under habeas corpus relief sought by a prisoner "in federal custody". See: Lipscomb, C.A. Mich. 1969, 408 F. 2d 1003, certiorari denied 90 S. Ct. 487, 396 U.S. 993, 24 L. Ed. 2d 455 rehearing denied 90 S. Ct. 692, 396 U.S. 1047, 24 L. Ed. 2d 694.

WHEREFORE, Frank Tubbs, Appellant, Pro Se, prays this Honorable Court Of Appeals for the Second Circuit to vacate the District Court, Appellee's, ruling on Appellant's application for a writ of habeas corpus; and decide the "question of jurisdiction" in favor of Appellant Tubbs for the following additional reasons:

I.

DOES THE DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT HAVE JURISDICTION TO GRANT POST-CONVICTION RELIEF(SOUGHT) IN A WRIT OF HABEAS CORPUS PURSUANT TO TITLE 28 U.S.C.A. 2241(c),(1),(3) TO A PRISONER "IN FEDERAL CUSTODY" WHO WAS TRIED, CONVICTED, AND SENTENCED IN THAT COURT?

1.) Under this section, Title 28 U.S.C.A. 2241(c),(1),(3), extending writ of habeas corpus to all cases where any person may be restrained of his or her liberty in violation of Constitution or of any treaty or law of the United States, United States District Courts have jurisdiction to determine whether prisoner has been deprived of liberty in violation of Constitutional Rights, even though proceeding resulting in incarceration may be unassailable on face of records. U.S. V. Hayman, Cal. 1951, 72 S.Ct. 263, 342 U.S. 205, 96 L. Ed. 232.

2.) District Court for district in which federal prisoner was incarcerated had no jurisdiction of his habeas corpus petition. Sims V. Willingham, C.A. Pa. 1962, 300 F. 2d 162 certiorari denied 83 S. Ct. 91, 371 U.S. 851, 9 L. Ed. 2d 87.

If the words "within their respective jurisdiction" in this section providing that writs of habeas corpus may be granted by federal courts within their respactive jurisdiction mean anything more than that court may act only if it has personal jurisdiction of proper custodian and capacity, within its geographical boundaries to enforce its orders, physical presence of petitioner within district is not an invariable, jurisdictional prerequisite, and it gives way in face of fairness and strong convenience. See: Word V. State of N.C., C.A.N.C. and Va. 1969, 406 F. 2d 352.

AND -3.) Writ of habeas corpus was designed to protect every person from being detained, restrained, or confined by any branch or agency of the Government. See: Scaggs V. Larsen, 1969, 90 S. Ct. 5, 396 U.S. 1206, 24 L. Ed. 2d 28.

Appellant Tubbs, Pro Se, herein respectfully prays this Honorable Court Of Appeals for the Second Circuit to:

1.) Vacate the District Court, Appellee's, ruling on on Appellant's application for a writ of habeas corpus for the above additional reasons; and

2.) Decide the "question of jurisdiction" in favor of Appellant Tubbs for all of the reasons enumerated in the figures and symbols herein; and

3.) Grant Appellant Tubbs application for a writ of habeas corpus for the following reason succeeding the "federal question" and the **essence** of Appellant Tubbs' position in this cause, to wit:

NOTE: PREFACE TO "FEDERAL CONSTITUTION QUESTION" PRESENTED IN CIVIL NO. N-74-88 IN THE DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT AT NEW HAVEN, CONNECTICUT, IN APPELLANT'S APPLICATION FOR A WRIT OF HABEAS CORPUS

May it please the Court, this preface to the "Federal Constitutional Question" which follows is composed for the purpose of:

A.) Outlining the intention of the District Court to amend indictment No. 12,716, in this cause, and

B.) Verifying with the support of the official trial transcript-(via Appellant's Appendix)-that part of the official records where the actual amendment of indictment(12,716)-occurred.

1.) [See: Appendix, page number: (17.)-ie-Tr: "844"]
Here the District Court informs the jury of the number of Counts Appellant Tubbs,(then defendant), was charged by the grand jury in indictment number:12,716, to wit:

> "The Court: As you know, the defendant, Frank Tubbs, has been charged in a Three Count Indictment with three separate violations of the federal bank robbery statute."

2.) [See: Appendix, page number:849]
The record, at this point, will clearly reflect the confusion in the mind of the Court which must have been communicated to the minds of the jurors as a consequence of the lengthy charge and recharging by the District Court, to wit:

> "The Court: I should mention at this time that I inadvertently said to you a moment ago that that was Count Three. It is Count Two. So, in other words, Count One is the taking by force and violence the money and--"

3.) [See: appendix, page number: 848; see:also, Appendix, page numbers:(3.) and (3-A)]; Reflected herein is the reading of the entire indictment 12,716, by the District Court to the jury. It is noteworthy to mention that all Three Counts that were returned by the grand jury was read to the trial jury, to wit: [See: Appendix, pages numbers: (3.) and (3-A).

4.) [See: Appendix, page number: 876] The exception to the charge given by the District Court was taken by the Goverment upon the Court's request for exceptions to the charge, to wit:

> "Mr. Crane: Yes, your Honor. I have several. First, Count Two the Government did not charge assault, and Count Three of the indictment this is 2113(c)--and it is merely possession of money taken from the bank and in your charge--"

On the same Appendix page, (876), the District Court's response to the exception to the charge that was taken by the Government will clearly reflect the Court's open admission to error, to wit:

> "The Court: I wish you had interrupted me Mr. Crane, you know, I charge 100 times bank robbery cases, and that this Government always charges attacking and carrying away a sum of money in excess of $100.00. I suppose I should have realised when I read it, but I thought this was a straight-down-the-line case, and I really think the Government should have pointed that out to me, that this was a twist in the usual bank robbery case. I mean, to take an exception, of course, is ridiculous, there is nothing to take an exception about. I made a mistake."

5.) [See: Appendix, pages numbers: 881 and 882]. This part of the record clearly reflect the intention of the Court to correct the previous mistake it made. Also reflected in this part of the records is the fact that in the District Court's attempt to correct its previous mistake, the District Court prepares to commit another error that is of Constitutional Dimensions, to wit:

> "The Court: So here is what I am going to do, and here is where I in advance will tell counsel what I intent to tell the jury so listen to me carefully and I will accept any suggestions:"
>
> "In a nutshell, I charge you on Count Three of the indictment and I now instruct you to wipe clean from your minds each and every statement I made with respect to Count Three. The Charge that I read to you from the indictment entitled Count Three is not a matter for the jury. You have no concern with it and it should not enter your discussions while you deliberate on Counts One and Two."

6.) [See: Appendix, page number: 884]. This part of the records clearly reflect the inappropriate manner that the District Court intends to amend the indictment, to wit:

> "The Court: There are two ways we can handle it. One: not send them the indictment at all, and if we do cut off Count Three, which, as I look down, can easily be done because it's right at the bottom of the page, and we can cut off Count Three or block it out, but as far as I am concerned, do you prefer I not send it in at all, is that--"

"The Court: I agree. That's why I said we will not give them the indictment and if they should ask for it, as you are looking at your indictment right now, you can see where we can cut it off where it says: Count Three, and there will be just Two Counts."

7.) /See: Appendix, page number: 888/. This part of the record will clearly reflect that Court was reconvened, the jury was brought back into the Courtroom and the District Court actually carries out the amendment of the indictment in this cause, to wit:

"The Court: ...(Ladies and gentlemen)... I charge you that with respect to Count Three of the indictment to wipe clean from your minds each and every statement I made with respect to Count Three. The Charge that I read to you from the indictment entitled Count Three is now not a matter for the jury. You will have no concern with it and it should not enter your discussions while you deliberate on Counts One and Two."

In concluding this preface, Appellant Tubbs, Pro Se, alleges that the amendment of the indictment not only violates the "due process" clause of the Fifth Amendment of the Constitution of the United States but also that part of the Fifth Amendment that states:

"no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,"

further Appellant Tubbs alleges that the Constitutional violation by the District Court substantially prejudiced his cuase in that the amendment of the indictment by the District without having resubmitted it to the Grand Jury prevented the trial jury from deliberating on the lesser Count of the indictment that also carried the least punishment.

II.

2.) DID THE AMENDMENT OF THE INDICTMENT IN SUBSTANCE (CRIMINAL NO. 12,716) BY THE DISTRICT COURT WITHOUT RESUBMITTING IT TO THE GRAND JURY WHO RETURNED A TRUE BILL ON SAME SAID INDICTMENT VIOLATE THE 5TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA ?

FRANK HARRY TUBBS, APPELLANT, PRO SE, WAS CHARGED by indictment in the United States District Court of Connecticut as follows: Count One charged Appellant with violation of Title 18 United States Code, Section 2113 (a), 2 (a) and 2 (b), alleging the taking by force and violence and intimidation from the person and presence of another, money belonging to and in the care, custody, control management and possession of a bank insured by the Federal Deposit Insurance Corporation. Count Two charged violation of Title 18 United States Code, Section 2113 (d), 2 (a) and 2 (b), alleging that in the commission of the acts alleged in Count One, said aforesaid acts did put in jeopardy the lives of tellers and customers of said bank by use of a dangerous weapon. Count Three charged violations of Title 18 United States Code Section 2113 (c) alleging the possession of a sum in excess of $100.00 which had been taken and carried awaywith intent to steal and purloin from a bank, the deposits of which were insured by the Federal Deposit Insurance Corporation.

Following the reading of the complete indictment, followed thereupon by a trial upon all three charges in which the prosecution was forced to introduce evidence in an attempt to prove all three charges, and in which it otherwise would not have produced in an attempt to disprove all three charges, and followed by a

trial by jury in which the entire indictment was presented and considered, the indictment was thereupon amended by the Honorable R.C. Zampano who decided that count three of the indictment should be deleted from the indictment, and thereupon the Honorable R.C. Zampano, upon his own motion, recalled the jury from their deliberations, recharged them informing them of the amendment, took the indictment-(12,716)-and a pair of scissors and physically removed Count Three from the indictment, returned the indictment to the jury and sent them back into deliberation.

The utter confusion which must have been a direct result of such an amendment can be noted by a reading of the fifty(54) four pages of the trial transcript (TR 844-898)-which were consumed by the charging and recharging (in accordance with the erroneously amended indictment)-of the jury.

In federal prosecutions, it is generally held that the constitutional guaranty that no person shall be held to answer for a capital or infamous crime except upon a presentment of indictment by a grand jury requires adherence to the common law rule that the Court has no power to amend the body of an indictment. Russell -vs- United States, (1962) 369 U.S. 749, 82 S. Ct. 1038 8 Led 2d 240. It is recognized that this strict common law rule is apparently being relaxed in some respects, but it is noted that such relaxation involves only amendments which have to do with form, not of substance, and then only if not prejudicial to the defendant's substantive rights. Johnson -vs- Florida, (19), (CA5 Fla) 207 F 2d 314.

Clearly the action taken by Judge Zampano is not one which could be considered merely as form, but rather was one of substance,

and affected greatly the presentation of evidence, and trial tactics of your Appellant. Clearly such action by the Court violated the substantive rights of the Appellant as guaranteed by the Fifth Amendment of the Constitution of The United States..

To allow the prosecutor, or the Court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him. It is well settled that an indictment may not be amended except by resubmission to the grand jury, unless the change is merely a matter of form. Sitrone -vs- United States, (19), 361 U.S. 212, 80 S. Ct. 270, 4 Led 2d 252.

> " "If it lies within the provice of a court to change the charging part of an indictment to suit its own notions of what it ought to have been, or what the grand jury would probably have made it if their attention had been called to suggest changes, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a prisoner's trial for a crime, and without which the constitution says 'no person shall be held to answer', may be frittered away until its value is almost destroyed...Any other doctrine would place the rights of the citizen, which were intended to be protected by the Constitutional provision, at the mercy or control of the court or prosecuting attorney; for, if it can be once held that changes can be made by the consent or order of the court in the body of the indictment as presented by the grand jury, and the prisoner can be called upon to answer to the indictment as thus changed, the restriction which the Constitution places upon the power of the court, in regard to the prerequisites of an indictment, in reality, no longer exists." Ex parte Bain, 1887, 121 U.S. 1, 7 S. Ct. 781, 30 Led 2d 849. (121 U.S. at 10, 13).

The federal courts have generally held or recognized that in federal prosecutions the Constitutional guaranty that no person shall be held to answer for a capital or infamous crime unless on presentment of indictment by a grand jury requires strict adherence to the common law rule that is beyond the power of the court to make or permit the amendment of an indictment. The rule that a federal court is without authority to make or permit an amendment in an indictment was followed or recognized in the following cases. Ex parte Bain, (1887), 121 U.S. 1,q30 Led 849, 7 S. Ct. 781; United States -vs- Norris, (1930), 281 U.S. 619, 74 Led 1076, 50 S. Ct. 424; Stirone -vs- United States, (1960) 361 U.S. 212, 4 Led 2d 252, 80 S. Ct. 270; Russell -vs- United States, (1962) 369 U.S. 749, 8 L ed 2d 240, 82 S. Ct. 1038; Dodge -vs- United States, (1919), CA2 NY, 258 F 300, 7 ALR 1510, cert. den. 250 U.S. 660, 63 L ed 1194, 40 S. Ct. 10; United States -vs- Holtz, (1923), DC NY, 288 F 81, affd (CA 2d) F 1019.

In Dodge -vs- United States, (1919, CA2 NY) 258 F 300, 7 ALR 1510, cert, den, 250 U.S. 660, 63 L ed 1194, 40 S. Ct. 10, where, at the close of the case, government counsel moved to strike out as surplusage portions of the first and second counts of an indictment charging a violation of the Espionage Act, to which defendant's counsel said: "No objection", whereupon the motion was granted, and the jury convicted on the first and third counts, the court, affirming the conviction under the third count only, held that the amendments deprived the trial court of power to proceed upon the first two counts. The action was error of the most serious kind, said the court, the rule being that an indictment cannot be amended by the court and that an attempt to do so is fatal.

(B)

In Dowdy -vs- United States, (1931), CA 4 NC, 46 F 2d 417, the court, reversing convictions of conspiracy to violate the prohibition law on other grounds, overruled the contention that the refusal to strike out certain portions of the indictment was error, stating that a part of an indictment may be treated as surplusage and rejected, or it may be withdrawn from the consideration of the jury if not sustained by the evidence, but that it may not be striken out. The rule that a portion of the charge not sustained by the evidence may be withdrawn from the consideration of the jury, but that a Court may not strike out part of an indictment was also recognized in Mellor -vs- United States, (1947) CA8 NEB, 160 F 2d 757, cert. den. 331 U.S. 848, 91 L ed 1858, 67 S. Ct. 1734 (affirming conviction of violating Mann Act).

In several cases in the federal courts, amendments with respect to a variety of happenings or circumstances have been denied under the application of the strict federal rule not allowing the amendment of indictments, other than with respect to matters of pure form, at least.

In Russell -vs- United States, (1962) 369 U.S. 749, 8 Led 2d, 240, 82 S. Ct. 1038, wherein convictions for refusing to answer questions when summoned before a congressional committee were reversed on the ground that the indictments were defective in failing to identify the subject under inquiry, the court declared that allowing the prosecutor or the court to make a subsequent guess as to what was in the minds of the grand jury would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure, and that the underlying principle was reflected by the settled rule in the federal courts that an indictment may not be amended except by resubmission to

to the grand jury, unless the change is merely a matter of form.

Where a scheme to defraud by use of the mails was charged in the First Count of the indictment and incorporated by reference in 16 additional counts, and the trial court partially sustained and partially overruled defendant's demurrer, after which the clerk was directed to strike out portions of the first count relating to the formation and operation of the scheme, the court in Garrett -vs- United States, (1927, CA 5 Tex), 17 F 2d 479, reversing a conviction, said that a demurrer to a court should be either entirely sustained or overruled, and ruled that the action taken resulted in amending the indictment, something that could not have been done legally, and amounted to reversible error. But the court added that the change in the indictment did not destroy it, the better rule being to consider the amendment void, and that a new trial might be had on the grand jury's original findings.

In Edgerton -vs- United States, (1944, CA 9 Cal), 143 F. 2d 697, convictions of using the mails to defraud were reversed, where the indictment averred that defendants represented that certain loans would be made only upon securities or property which had been approved as legal investments by certain state officials, and the trial judge instructed the jury that he struck out, and the jury should disregard, the portion relating to such approval, the court holding that the instruction worked as amendment of the instruction worked an amendment of the indictment which altered the nature of the alleged misrepresentation, with the result that defendants were tried on a charge different from that found by the grand jury, even though there was no physical striking of a portion of the indictment, and that the rule was applicable that federal

courts are without power to alter or amend indictments.

US - Jeffers v. United States (CA9 Ariz) 392 F 2d 749; Stewart vs. United States (CA8 Iowa) 395 F 2d 484.

Indictment expired where it was amended in matter of substance other than by grand jury of sovereign who returned it. United States vs. Williams (CA3 NJ) 412 F 2d 625.

Charging part of indictment could not be changed by court to suit its notions of what it ought to have been or what grand jury would probably have made it if their attention had been called to suggestive changes.

United States -vs- Florio, (DC NY) 315 F Supp 795.

In those jurisdictions which adhere to the rule that the court has no power to authorize an amendment of an indictment, as is the case here, it is usually held that such unauthorized amendment of an indictment invalidates the indictment. (Ex parte Bain, Supra).

CONCLUSION

WHERE FORE, FRANK TUBBS, APPELLANT, PRO SE, respectfully prays this Honorable Court Of Appeals for the Second Circuit to:

1.) Enter and hear this appeal in its entirety on the face of its merits; and the records, and that

2.) Upon said hearing, Appellant Tubbs be released forthwith, and for all further and complete relief in the premises, be afforded.

Respectfully submitted,

Frank Tubbs

Frank Tubbs, Appellant, Pro Se

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FRANK TUBBS, PRO SE
APPELLANT
V.
UNITED STATES OF AMERICA
APPELLEE

DOCKET NO: 74-1671

V E R I F I C A T I O N

Frank Tubbs, Appellant, Pro Se, being duly sworn upon his oath, deposes and says:

That the matters, facts and statements contained in the attached legal document/(s) is/(are) true to the best of his knowledge, information and belief.

FURTHER AFFIANT SAYETH NOT.

Frank Tubbs, Affiant

Subscribed and Sworn to and before me this 14 day of June, 1974.

SS: _____
United States Parole Officer

Frank Tubbs
37081-133-G
P. O. Box # 33
Terre Haute, Indiana
47808

Appellant Pro Se

PROOF OF SERVICE

I, FRANK TUBBS, Appellant, Pro Se, do hereby swear that on the 27 day of June, 1974, that I placed in the U. S. Mail, registered, air-postage, Special Delivery, one copy of the foregoing attached: Brief and Appendix

Docket No: 74-1671 to:

OFFICE OF THE U. S. ATTORNEY
MR. STEWART H. JONES, ESQ
FEDERAL BLDG. DIST OF CONN
NEW HAVEN, CONNECTICUT 06505

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
NEW HAVEN, CONNECTICUT
06505

Frank Tubbs
Frank Tubbs, Affiant

SUBSCRIBED and SWORN to before me this 27 day of June 1974

UNITED STATES PAROLE OFFICER